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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

DARRIN JONES,

Defendant and Appellant.

B291123

(Los Angeles County  
Super. Ct. No. SA076390)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark A. Young, Judge. Affirmed.

G. Martin Velez, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., and Charles J. Sarosy, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Darrin Jones contends he was denied due process because he did not receive written notice of the grounds for revoking his probation, and that his counsel was ineffective for failing to object on this basis. We conclude defendant has forfeited appellate review by failing to raise this claim below, and in any event, find no error and affirm.

### **BACKGROUND**

In May 2015, defendant was sentenced to 11 years in state prison for attempted burglary, pursuant to an open plea. The trial court suspended execution of the sentence and placed defendant on three years formal probation. As a condition of his probation, defendant was required to obey all laws.

On January 17, 2018, defendant was charged by felony complaint with first degree residential burglary (Pen. Code, § 459) and grand theft (§ 487, subd. (a)) (Case No. SA097097). The complaint alleged defendant entered the occupied home of Suphan Salazar on May 11, 2017, and took her personal property.

Defendant was arraigned on February 7, 2018. He was present in court, waived further reading of the complaint, and entered a plea of not guilty. The court summarily revoked his probation in this case. Defendant's probation violation proceedings trailed the proceedings in the new burglary case.

On February 23, 2018, defendant successfully moved to dismiss the new burglary case for lack of a timely preliminary hearing. The People refiled the same complaint, and defendant again pled not guilty.

The preliminary hearing and probation violation hearing were initially scheduled to be heard concurrently, but the trial court granted the People's request that the probation violation not be heard at the same time as the preliminary hearing.

At the preliminary hearing, officer Kevin Pellon testified that in the early morning hours of May 12, 2017, he responded to a report of a burglary at Ms. Salazar's residence on Reading Avenue in Los Angeles. Ms. Salazar reported that when she returned to her home the evening before, her bedroom window was wide open, the screen was removed, and many things were missing.

Officer Pellon obtained a surveillance video from a neighbor which depicted someone walking away from Ms. Salazar's home with a bag. Police also obtained fingerprints from her bedroom window.

Officer Michael Park testified that the fingerprints were recovered from the bedroom window within a fenced patio area, and were defendant's prints.

On June 21, 2018, the trial court granted the prosecution's request to dismiss the new case and proceed with the probation violation. A probation violation hearing was calendared for June 26, 2018. Defendant did not object, and at the probation violation hearing, announced ready to proceed.

Ms. Salazar testified consistently with the evidence presented at the preliminary hearing. Her bedroom window opened to an enclosed patio, surrounded by a fence with an entry gate. The gate was blocked with a barbecue grill and heavy planter.

Ms. Salazar's neighbor provided police with part of a surveillance video of the front of Ms. Salazar's home. The video showed a man near Ms. Salazar's residence carrying away her property. No evidence was presented that the man in the video was defendant.

Ms. Salazar's neighbor saw defendant on a daily basis over

a three-month period, assisting with welding work on a fence near Ms. Salazar's patio. He never saw defendant in Ms. Salazar's patio.

The parties stipulated that the fingerprints recovered from Ms. Salazar's bedroom window belonged to defendant.

During closing argument, defense counsel argued the surveillance video clearly depicted someone other than defendant carrying away Ms. Salazar's possessions, and did not show defendant in the area on the date of the burglary. He argued there may be an innocent explanation for the fingerprints, given defendant's work in the area, and opined that defendant may have committed "a trespass on some other date, but I don't think we even had notice to be able to defend against something like that."

The court asked the People to clarify their theory of the probation violation, asking whether it was that defendant had committed a trespass or participated in a burglary. The prosecutor responded, "[t]he theory we're working with is that it's a trespass that ultimately led to a burglary."

The court found there was strong circumstantial evidence defendant played a role in the burglary. The court explained, "the court does believe there is a preponderance of the evidence at the very least [defendant] was involved in a trespass. . . . The court does believe that he was a participant in the residential burglary that occurred."

The court found defendant violated his probation and imposed the 11-year sentence that was previously suspended.

Defendant filed a timely notice of appeal.

## DISCUSSION

Defendant contends he was denied due process because he did not receive written notice of the grounds of the probation violation. At no time did defendant object on this basis in the trial court. After the presentation of evidence at the probation violation hearing, defense counsel argued defendant may have committed “a trespass on some other date, but I don’t think we even had notice to be able to defend against something like that.” This statement reflects *defendant’s theory* that his fingerprints could have been innocently left on the window at some other time. The prosecution theory was burglary, not trespass. Defense counsel’s statement that the evidence showed only trespass which was never charged can hardly be construed as an objection to lack of written notice of the burglary that *was* charged as the basis for the probation violation. Thus, any claim of inadequate notice has been forfeited. (*People v. Hawkins* (1975) 44 Cal.App.3d 958, 967; *People v. Buford* (1974) 42 Cal.App.3d 975, 982.)

And in any event, defendant has not demonstrated error. Penal Code section 1203.2, subdivision (a) authorizes the trial court to revoke probation if it “has reason to believe . . . that the person has violated any of the conditions of his or her supervision.” Defendants must be afforded certain due process protections before probation is revoked, including “written notice of claimed violations. . . .” (*People v. Rodriguez* (1990) 51 Cal.3d 437, 441.) Defendant’s theory is that he did not get written notice of a probation violation for trespass, and that is correct, since the People asked the court to revoke probation and execute the sentence for *burglary*, not trespass. Defendant certainly had written notice of the burglary facts alleged against him since he

plead not guilty twice at arraignment on the complaint in the new case, and he attended the preliminary hearing which was based on the same evidence presented at the probation violation hearing.

The trial court found defendant participated in a burglary, and not simply an unalleged trespass. Defendant was given ample notice of the facts supporting his probation violation. (*People v. Felix* (1986) 178 Cal.App.3d 1168, 1172.) Consequently, counsel was well aware of the basis for the probation violation, and was not ineffective for failing to object. (*People v. Cudjo* (1993) 6 Cal.4th 585, 615.)

#### **DISPOSITION**

The judgment is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

STRATTON, J.